IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO.3952 of 2005

Between:

Northern Power Distribution Company of A.P.Limited, H.No.1-1-504, Opp. REC Petrol Pump,
Chaitanyapuri, Hanamkonda, rep., by its Chief General Manager (Expr.) Sri M.Rajeswar.

..... PETITIONER

AND

1 The Commercial Tax Officer, Jangaon.
2 The Appellate Deputy Commissioner (CT), Warangal Division,

Warangal.
3 The Chief Manager, State Bank of Hyderabad, Hanamakonda (Main)

Branch, Hanamkonda.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction particularly one in the nature of Writ of Certiorari after calling for the records and quash the impugned rejection order passed by the second respondent dated
24-02-2005 passed in I.No.286/2004-05 for the assessment year
2003-04 (Entry tax) together with the garnishee notice dated
22.02.2005 issued by the first respondent to the bankers of the petitioner, the third respondent herein passed in Ref.No.Asst.No.1/2003-04 (Entry tax) in seeking to

recover the disputed Entry Tax of Rs.1,25,27,383/- for the year 2003-04 (Entry Tax).

Counsel for the Petitioner: MR. S. KRISHNA MURTHY

Counsel for the Respondents: SPECIAL STANDING COUNSEL FOR COMMERCIAL TAX

The Court, at the admission stage, made the following:

ORDER:

(per the Hon'ble Sri Justice T. Ch. Surya Rao)

Petitioner seeks Writ of Certiorari. The order now being impugned in the instant writ petition is dated 24.02.2005 passed by the learned Appellate Deputy Commissioner (CT), Warangal, where under and whereby the learned Appellate Authority dismissed the appeal at the threshold and in consequence thereof initiated the recovery proceedings by seeking to attach the bank account of the petitioner.

We have heard the learned counsel for petitioner and the learned Special Standing Counsel for Commercial Tax. We are inclined to dispose of the writ petition itself at the threshold by making appropriate directions.

The instant writ petition is filed assailing the order on two grounds, namely, the order is vitiated as opposed to the principles of natural justice and there is no liability for the petitioner to pay the entry tax. Since we are inclined to dispose of the writ petition at the threshold, we feel it is not appropriate to enter into the merits of the case and decide as to the liability or otherwise of the petitioner to pay the entry tax. The writ petition is being disposed of only on the first ground.

A perusal of the impugned order shows that on the very date, on which the appeal came to be filed, it was dismissed and rejected. It is obvious, therefore, that the appellant has not been heard and no opportunity has been given to him to put forth his case. Learned counsel for the petitioner represents that the appellate authority has not considered the Division Bench judgment of this Court in a proper perspective and has sought to avoid the judgment by seeking to place reliance upon, wrongly, the judgment of the Apex Court which is quite inappropriate to the

facts and circumstances of the case. As discussed herein above, we are not inclined to accept such contentions and consider the merits of the case, as we are inclined to dispose of the writ petition at the threshold having regard to the fact that the order now being impugned is opposed to the principles of natural justice since the petitioner has not been afforded any opportunity to put forth his case and it is a clear case of summary rejection of the appeal.

Learned Special Standing Counsel for Commercial Tax, on the other hand, represents that as against the impugned order an appeal lies to the Sales Tax Appellate Tribunal and therefore the present writ petition cannot be maintained.

Since we are proceeding on the ground that the impugned order is opposed to the principles of natural justice, we are of the considered view that the writ petition can be disposed of by making appropriate directions, taking into consideration the interest of both the parties.

For the reasons discussed herein above, the writ petition shall have to be disposed of and is hereby disposed of with the following directions.

1. The petitioner shall deposit 12.5% of the disputed tax, which is a condition precedent for maintaining the appeal, which is conveniently not deposited.

2. In addition to that the petitioner shall pay 25% of the disputed tax and on such payment the attachment order shall stand suspended, throughout the proceedings until the appeal is disposed of.

3. The petitioner is given two days time from today to deposit 12.5% of the disputed tax, if not already paid, and is given four weeks time from today for depositing 25% of the disputed tax as directed herein above.

4. The 2nd respondent, on such payment, shall hear the appeal by affording every opportunity to the petitioner and dispose of the same in accordance with law.

With the above directions, the writ petition stands disposed of. No order as to costs.

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M.H.S. ANSARI, J.

T.CH. SURYA RAO, J.

Date: 02.03.2005

NOTE:

Issue CC on priority basis

(B/O)

Nsr

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commercial Tax Officer, Jangaon.
2 The Appellate Deputy Commissioner (CT), Warangal Division,

Warangal.
3 The Chief Manager, State Bank of Hyderabad, Hanamakonda (Main)

Branch, Hanamkonda.

4 Two CCs to Special Standing Counsel for Commercial Tax, High

Court of AP, Hyderabad (OUT)

5 Two CD copies

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